IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2345

SUNC. CECILIO HUERTAS BARBOSA, ET. AL.
Plaintiffs, Apppellants

v.

ALEJANDRO BUITRAGO, HOSPITAL
Defendant, Appellee

Before

Stahl, Circuit Judge,
Campbell and Bownes, Senior Circuit Judges

JUDGMENT
Entered: November 7, 2000

After a thorough review of the record and of the parties' submissions, we affirm on the sole ground that the federal courts lack jurisdiction in this matter under District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983), and Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). See Sheehan v. Marr, 207 F.3d 35, 40 (1st Cir. 1999) (federal court lacks jurisdiction to review constitutional challenge "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it") (quotation marks and citation omitted); Howell v. Supreme Court of Texas, 885 F. 2d 308, 312 (5th Cir. 1989) ("Because [appellant] did raise his [Constitutional] claim in the state court, allowing a new challenge in federal district court would necessarily require

review of a final state court judgment."). The appellee's motion for stay is denied as moot.

Affirmed. 1st Cir. Loc. R. 27 (c).

By the Court:
PHOEBE MORSE
Clerk.

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SUNC. CECILIO HUERTAS BARBOSA, et.al.,

CASE NUM. 99-1624 (DRD)

v.

COMMONWEALTH OF PUERTO RICO

ORDER

MOTION	RULING
Date Filed: August 27, 1999 **Docket # 3** **[ ] Plff [X] Deft [ ]Other** **Title:** Motion To Dismiss	**GRANTED.** The Eleventh Amendment clearly **bars suit** against the Commonwealth of Puerto Rico. See e.g. Castro v. Commonwealth of P.R., 43 F. Supp 2d 186 (D.P.R.1999). Furthermore, an appeal is pending before the Supreme Court of Puerto Rico. Wherefore, this case is **Dismissed.** Judgment shall be entered accordingly. IT IS SO ORDERED

(Signed)

Date: **October 19, 1999** **DANIEL R. DOMINGUEZ**
U.S. District Judge

JUDGMENT

MOTION	RULING
Date Filed: August 27, 1999 **Docket # 3**	In accordance with the Order of this same date, this case is **DISMISSED.**

[ ] Plff [X] Deft [ ] Other
Title: Motion To Dismiss

IT IS SO ADJUDGED AND DECREED.

(Signed)

Date: October 19, 1999

DANIEL R. DOMINGUEZ
U.S. District Judge

Rec'd: **EOD:**

By: # 9

Exhibit B

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

Rafael Oliveras López de Victoria, Esquire,
Asociacion de Maestros Building, office 609
452 Ponce De León Avenue,
San Juan, Puerto Rico 00918

NOTIFICATION

I hereby certify that in relation to the petition of certiorari the court dictated the accompany resolution:

Sigfredo Rodríguez Isaac, Attorney General
PO Box 9020192,
San Juan, Puerto Rico 00902-0192

San Juan, Puerto Rico, October 13, 1999.

signed
Isabel Llompart Zeno
Clerk of the Supreme Court

Exhibit C

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

RESOLUTION

San Juan, Puerto Rico, October 8, 1999.

To the petition of Certiorari, not granted.

Accorded by the Court and certified by the Secretary of the Supreme Court. The Associate Judge Mr. Fuster Berlingeri will grant certiorari to reexamine the constitutionality of the law. The presiding Judge Mr. Andreu García and Associate Judge Mr. Corrada Del Río did not intervene.

Isabel Llompart Zeno
Clerk of the Supreme Court

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

Rafael Oliveras López de Victoria, Esquire,
Asociacion de Maestros Building, office 609
452 Ponce De León Avenue,
San Juan, Puerto Rico 00918

NOTIFICATION

I hereby certify that in relation to the petition of certiorari the court dictated the accompany resolution:

Sigfredo Rodríguez Isaac, Attorney General
PO Box 9020192,
San Juan, Puerto Rico 00902-0192

San Juan, Puerto Rico, November 23,1999.

Isabel Llompart Zeno
Clerk of the Supreme Court

Exhibit C

THE SUPREME COURT OF PUERTO RICO

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- PETITIONER** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - RESPONDANTS**	CASE NUM.CCC-1999-373 **CERTIORARI**

San Juan, Puerto Rico, November 18, 1999.

To the Informative Motion dated October 29, 1999, the Court takes due notice.

To the Motion requesting reconsideration, dated October 29, 1999.

Not granted.

Accorded by the Court and certified by Clerk of Supreme Court the same.

The Associated Judges Mrs. Naveira de Rondón and Mr. Fuster Berlingeri and Corrada Del Rio did not intervene.

Isabel Llompart Zeno
Clerk of the Supreme Court

THE CIRCUIT COURT OF APPEAL
OF PUERTO RICO
SUBPART GUAYAMA

SUCN. CECILIO HUERTAS BARBOSA, et.als. **PLAINTIFF- RESPONDANT** Vs. HOSPITAL ALEJANDRO BUITRAGO,ET. ALS. **DEFENDANTS - PETITIONERS**	CASE NUM.KLAN 98-01438 CIVIL REF.**GDP88-2291**

NOTIFICATIONS

The Secretary, the subscriber, notify you that his court has dictated a judgment on the alone case dated March 16, 1999, which has been duly registered and filed in the records of this case, wherein you can know the out in details the term of the case and being a representing you, the perjudicial party by the sentence, from which can established. The resource appeal, I address this notification to you, having filed in the dockets of this case copy dated March 23, 1999.

Rafael Oliveras López de Victoria, Esquire,
Asociacion de Maestros Building, office 609
452 Ponce De León Avenue,
San Juan, Puerto Rico 00918

Sigfredo Rodríguez Isaac, Attorney General
PO Box 9020192,

Exhibit D

San Juan, Puerto Rico 00902-0192

Secretary General of Guayama
PO Box 300
Guayama, Puerto Rico 00785-0300.

San Juan, Puerto Rico a, March 23, 1999.

_____

Aida Ileana Oquenda Graulau
Secretary General
For: Arlyn Molina Logroño
Auxiliary Court Secretary II

THE CIRCUIT COURT OF APPEAL
OF PUERTO RICO
SUBPART GUAYAMA

SUCN. CECILIO HUERTAS BARBOSA, et.als.
PLAINTIFF- RESPONDANT

Vs.

HOSPITAL ALEJANDRO BUITRAGO,ET. ALS.
DEFENDANTS - PETITIONERS

CASE NUM.KLAN 98-01438

CIVIL REF.**GDP88-2291**

JUDGEMENT

The panel integrated by its President Judge Pesante Martínez and the other judges Mr. Martínez Torres and Salas Solar.

Pesante Martínez, Presiding, Judge.

In San Juan, Puerto Rico, March 16, 1999.

The present appeal has its origin in a tort complaint filed by defendants due to the death of their mother caused by the negligence of the Commonwealth of Puerto Rico, the sole defendant which a trial was held or its merits. In the writ of appeal it is only questioned the amount awarded to the Plaintiff, for the same excess the limits established by Article 2 (a) of the Law of Claims against the State and the ruling by the trial court when it declare unconstitutional said Article. We revoke.

Exhibit D

Mrs.Julia Laboy, mother of the Plaintiff, was surgically operated by doctor Luis M. Rodríguez González, surgeon whho has his medical practices in Guayama, Puerto Rico. This operation was performed at the Alejandro Buitrago Hospital, an institution by the Commonwealth of Puerto Rico. The operation was an elective and was performed in order to eliminate the utherous, ovaries and liberate pelvic adherances. The day after the operation the health of Mrs. Julia's health worsend; she was sweaty, pale with the low blood pressure and presented a medical condition of posible internal bleeding. At 12:30 midnight the day after she was submitted to a exploratory laparactomy in order to determine the origin of the bleeding a massive hemorrage was found in the abdominal cavity and laceration in the spleen with a massive hematoma. At 8:00 A.M., Mrs. Julia Laboy died.

From the forensic medical report submitted by forencis patologist, Dr. Francisco J. Landron, suggested that the death was caused by a massive internal hemorrage due to a laceration on the spleen product of the first medical operation. Having examined the facts one examined completely all the facts

Examining all the evidence, the court found and concluded that the case was a clear gross negligence determined by the bad administration / handling of Mrs. Julia, pacient, was subjected to wit. (1) Dr. Rodriguez Gonzalez by realized an operation which was not the indicated one and lacerated the spleen; (2) By not administerating the post operation diagnostic tests to determine the area and extension of the internal hemorrage which she suffered; (3). By not consulting inmediately with a chief surgeon when it was realized she was hemorraging (at 10:00 a.m. of September 25, 1988) and waited almost all day and part of the night,

when Dr. Roque Nido Laracuente was called which in effect operated her inmediatly; (4) By not having blood available on time to avoid that the deceased would not die of hipovolemic shock.

Having established the gross negligence on part of the defendant, the Court found that Mrs. Julia Laboy, was intervined / operated by Dr. Luis M. Rodriguez Gonzalez, medical surgeon in Guayama. This operation took place at Alejandro Buitrago Hospital, institution where is operated, controled and administered by the Commonwealth of Puerto Rico. The operation was one of elective caracter, and managed to remove the uterus, ovaries and liberate any pelvic adherencies. The following day after the operation, Mrs Julia health got worse, she was sweating, pale and her blood pressure low, she presented a medical picture of posible internal bleeding. At 12:30 midnight of the following day she was submitted to a laparoctomy to determine the origin of the hemorriage. They found a massive hemorrage in her abdominal cavity and a laceration in the spleen organ with a massive hematoma at 8:00 a.m. Mrs. Julia died.

(a) Damages are awarded for the mental suffering and anguish of each of the Fourteenth (14) children of the deceased Mrs. Julia Laboy Rosa in the basic sum of $100,000; that is, for the total sum of $1,400,000.

(b) It fixed the amount of 280,000.00 for damages suffered, by the Mrs. Julia when she was without blood for a whole day, the same shall be distributed in equal parts to all her children.

Not in agreement with the above mentioned judgment, the Commonwealth of Puerto Rico filed a appeal in this court. The appeal does not cuestion the determination of the negligence as decreed by the court but the errors presented verse around the amount of damages granted in excess of the

compensation that could be granted in accordance to the Law of Claims the State. We modify the judgment in controversy to adjust the same to the maximun limits establish by said act.

The Law of Claims against the State, in its Article 2 (a) 32 LPRA, Sec. 3077, decrees the following in accordance to the limits by which the Commonwealth of Puerto Rico acceded to be sued:

> "3077. Claims and suits against the Commonwealth - Authorization
>
> Authorization is hereby granted to sueu the Commonwealth of Puerto Rico before the Court of First Instance of Puerto Rico for the following causes of action:
>
> "(a) Actions for damages to a person or property up to the sum of seventy-five thousand (75,000) dollars caused by a culpable or negligent act or omission of any official, agent, or employee of the Commonwealth, or of any other person acting in an official capacity within the scope of his duty, office, or employment. Where such action or omission causes injury to more than one person, or where a single injured party is entitled to several causes of action, the compensation for damages caused by such action or omission shall not exceed the sum of one hundred and fifty thousand (150,000) dollars. If from the findings of the court it arises that the sum of the damages caused to each one of the persons exceeds $150,000, the court shall proceed to prorate said sum

among the plaintiffs, taking as a basis the damages sustained by each."

This precept is free of all ambiguities and the Supreme Court of Puerto Rico has expressed itself on constitutionality of same. In three years after the instant case was resolved, in Gonzalez Pérez v. E.L.A. _____DPR_____(1995); 95 JTS 52 Publish opinion of April 26, 1995 citing Defendini Collazo v. E.L.A._____DPR_____ (1993); 93 JTS 119, opinion dated July 15, 1993. which rejected the argument the the Law of Claims against the State violates the constitutional principles of due process and equal protection of the law.

In reference to the argument that the said statute violes the principle of equal protection of the laws under our constitution, the Supreme Court in Defendini state the following:

The petitioners sustain that the law created a discriminatory clasification (in violation fo the equal protection of the law) when it distinguishes between claims against the state and those that are private. In the first ones it is only comensated up to the limits, while in the second ones there are no limits. Consider that there is a rational nexus between the interest to protect the public treasury and the limitation to the compensable amount this clasification responds to real diferenses between the State and a private entity. Through the State the citizens receive services such as public security and medical services among them. To finance the same it has limited funds. On the contrary, the private entities have none of these responsabilities.....This diference justify said challenged clasification and demostrates that a rational nexus exists between the interest of the State in the protection of its public treasury and the limitation to the compensable amounts (Our emphasis case citation omited)

Neither Law 104 violates due process of the law when it imposes economic limits. This arguments was the object of discussion in **Defendini Collazo, supra**. There the Supreme Court (of Puerto Rico) express itself in the following manner:

> "The Legislature, in its excercise of its a power as a State, has ample faculties to aprove economic reglamentation directed to provide the welfare of the People. The only limitation it has is establish by the due process guaratees. The right to file a complaint in torts constitute a property interest (omitted citations).
>
> As we have disposed beforehand, the interest of the State in the protection of the public treasury is a legitimate one which is reasonably related to the economic limitation disponsed by law. Therefore, the only thing we must determine is if said limits are clearly arbitrary and therefore violating due process of the law.
>
> The selection of the limits of $75,000 and $150,000 is based an evidence relative to the economic impact that may fall or the public treasury regarding claims against the State. Therefore, the limits have a fundamental rationale and are not clearly arbitrary.
>
> In light of these determinations we resolve that Article 2 and 7 of Law 104 as amended, do not violate the guarantee of sustantive due process. There is no constitutional vice whatsoever. Therefore, we sustain its constitutionality."

We recognize that the loss of a dear one is difficult, not to almost imposible, to quantify in dollars and cents. Moreover, as human beengs we do solidarize ourselves with the suffering of the follewman, however this fact does not grants us the power to alter the limits established by Law 104. Our function as judges does not include that to legislate and neither omit judicial prescedents. "If by reason of the passage of time and the development of the economy, these limits must be revese established in 1983, this is task corresponds to the Legisture". **Defendini Collazo v. E.L.A., supra**, page 11011.

Consonous with the previous exposition, we revoke the judgment in controvesy. We modify the compensation granted to that form that Plaintiff will receive the maximun contemplated in Article 2 of the Law of Claims against the State:
$150,000.

Accorded by the Court and certified by the General Secretary.

(signed)_____
Gladys Ortega Ramírez
Subsecretary General
Attorney Aida I. Oquendo Graulau
Secretary General

COMMONWEALTH OF PUERTO RICO
TRIAL COURT
GUAYAMA PART

SUCS. CECILIO HUERTAS BARBOSA AND THE COMMUNITY PROPERTY FORMED WITH JULIA LABOY ROSA ; CICILIO DANIEL, SALVADOR SANTOS, HERMINIA, ELMIS, MANUEL, MINERVA, JOSEFINA, CARMEN IRIS, LUZ, MATEO AND FRANCISCO, ALL SURNAMED HUERTAS LABOY; SANTOS LABOY AND CASIMIARA MARTINEZ & COMMUNITY PROPERTY FORMED BY SANTOS LABOY AND CASIMIRA MARTINEZ	**CIVIL NO.** GDP88-2291 **SUBJ: TORTS**
PLAINTIFFS	
VS	
ALEJANDRO BUITRAGO HOSPITAL AND/OR THE COMMONWEALTH OF PUERTO RICO, MUNICIPALITY OF GUAYAMA, AND THE ADMINISTRATION FOR PATIENT'S COMPENSATION FUND PLAINTIFSS KNOWN AS JOHN DOE, RICHARD DOE AND OTHERS, WHO ARE CO-INSURERS OF THE ABOVE STATED CO-DEFENDANTS AND/OR MEMBERS OF THE MEDICAL TEAM FOR ALEJANDRO BUITRAGO HOSPITAL, WHOSE NAMES ARE UNKNOWN BUT WILLO BE NAMED DEFENDANTS "A" TO "Z" & OTHERS; DR. LUIS RODRIGUEZ GONZALEZ, THE COMMUNITY PROPERTY AND INSURANCE COMPANY NAMED AS THE INSURER FOR	**Exhibit E**

RODRIGUEZ; CORPORACION INSULAR DE SEGUROS :
DEFENDANTS :
==========

JUDGMENT

Appearing at the full hearing on March 25th and 26th of 1998 were the plaintiff, represented by attorney Rafael A. Oliveras López de Victoria, and defendant, through attorney Sara Vicenty Azizi. Co-defendant Dr. Luis Rdoríguez Gonzalez was served on date of April 1st of 1989; he never appeared. Default was entered on date of December 21st of 1990, and procedures in the case continued therein,

Plaintiffs entered their own testimonies as proof of fact; in addition to, they presented as witnesses Dr. Vincent Wade and Dr. Roque Nido Laracuente. The first physician is an expert witness in the specialty of obstetrics and gynecology; whereas, the latter is a major surgeon, he was solely announced as eyewitness to a surgery which was performed on September 26th of 1988.

On the other hand, the defendant did not present any testimonial nor documentary evidence. They only cross-examinaed evidence presented by the plaintiff, stipulating as evidence all records from Alejandro Buitrago Hospital, which consisted of the hospital medical records, in addition to a pathological report by Dr. Francisco J. Landrón. Plaintiff also submitted a report by Dr. Vincent Wade Masters, M.D., which is an expert opinion as to medical malpractice relating to the medical treatment endured by the deceased, Julia Laboy Rosa. Same was marked, without objection by co-defendant Commonwealth of Puerto Rico, as an exhibit from the plaintiff. In accordance with the

proof submitted and admitted, and after careful analysis and study of same, and in view of the credibility shown us by those witnesses who did testify, this Court renders the following:

DETERMINATIONS OF FACTS

1. On the date in which the events of this case ocurred, Mrs. Julia Laboy Rosa (Doña Julia), was married to Cecilio Huertas Barbosa.

2. During their marriage, the stated spouses conceived fourteen (14) children, of which twelve (12) who still survive, testified at the trial, excepting Mateo Huertas Laboy, who is disabled.

3. Alejandro Buitrago Hospital (A.B.H.) is a hospital-medical institution which is operated, controlled and/or managed by the Commonwealth of Puerto Rico.

4. On date of September 23rd of 1988, Mrs. Julia was hospitalized at H.A.B. for total abdominal hysterectomy with "a bilateral salpingo oopherectomy", an elective surgery which Dr. Luis Rodriguez Gonzalez (Dr. Rodriguez Gonzalez), had ordered.

5. Mrs. Julia was examined at the above stated institution in the admissions ward by hospital physicians, as well as by Dr. Rodriguez Gonzalez.

6. Once surgery was performed on September 24th of 1988, Mrs. Julia was taken to the recovery room, and later on to her own room within said hospital.

7. During that time in which Mrs. Julia was attended by A. B. H. hospital personnel, her daughter Mrs. Luz M. Huertas Laboy (Mrs. Huertas Laboy), remained with her during the evening and morning hours of September 24th and 25th of 1988.

8. During morning hours at about 8:00 A.M., on September 25th, Mrs. Huertas Laboy observed that her mother was cold pale, sweaty, weak, having difficulty breathing and opening her eyes.

9. At said time, Mrs. Huertas Laboy requested that the nurses examine Mrs. Julia, given her noticeable precarious condition of health.

10. Once Mrs. Julia was examined by a physician - who was not Dr. Rodriguez Gonzalez - he found that her blood pressure was low, 90/80, with tachycardia, since her pulse rate was at 100 pulses per minute; she was pale, sweaty and had problems as to orientation. The examining physician indicated that there existed a possibility that Mrs. Julia might be bleeding. Lab tests were ordered to confirm or reject said findings.

11. Said labs reflected very low and dangerous hemoglobin levels (8mg.), confirming that Mrs. Julia had internal bleeding.

12. On September 25th of 1988, Mrs. Julia was visited by several hospital physicians, specifically at 2:04 P.M., and later on at 7:10 P.M.

13. During said stage, Mrs. Julia was very weak, and her health condition deteriorated as time went by.

14. At 12:30 A.M. on September 26th of 1988, after more than thirteen (13) hours had elapsed since Mrs. Julia was found to be in a precarious post-surgical condition of health, she was submitted to an exploratory laparotomy as to determine the source of the hemorraging. A massive hemorraghe was discovered within abdominal cavity, and a laceration to her spleen, jointly with a massive hematoma.

Once surgery was concluded, Mrs. Julia was taken into intensive care, her condition was extremely grave.

Since there was no blood available at A.B.H.'s blood bank, family members and the surgeon made phone contacts to obtain some. Said steps were taken in the early morning hours (at about 5:00 A.M.) of september 26th of 1988. It was after this that Mrs. Huertas Laboy left for San Juan to retrieve it. That tardiness in procedure prompted that the needed transfusions were not given, thereby resulting in her death.

15. Mrs. Julia died at around 8:00 A.M; her daughter Mrs. Huertas Laboy, learned about said fact at the moment while she was in San Juan procuring the blood which her mother was needing.

16. It surfaces from the Forensic Medical Report by Forensic pathologist, Dr. Francisco J. Landrón, that the cause of death of Mrs. Julia, was massive internal hemorrahge due to a laceration of the spleen, of a traumatic-yatrogenic origin,as the result of the first surgical procedure.

17. Expert proof established by Dr. Vincent Wade Masters gynecologist-obstetrician demonstrated that there was gross negligence in the management of Mrs. Julia, as a patient, within the following areas:

(a) The surgery effected by Dr. Rodriguez Gonzalez was not the appropriate one. An open laparactomy was performed to extract her reproductive organs, - instead of a vaginal hysterectomy procedure.

(b) During the pre-surgical stage, a sufficient amount of blood was not requested, in case of any emergency that might have arosen after said surgery.

(c) Investigations about the reasons as to why there was such loss of blood upon performing a laparotomy was delayed, since there was no adequate follow-up to provide for any forseable post-surgical emergency intervention, that could

have been required. The medical record from Alejandro Buitrago Hospital indicates that there were at least four (4) visits by four different physicians between 10:00 in the morning and 7:00 on the night of September 25th of 1988. Nevertheless, no surgeon was called in for consultation up to that point. At 11:00 P.M. at night, as pointed out by Dr. Roque Nido Laracuente, was when the Hospital's medical and/or paramedical personnel consulted with a surgeon.

(d) The laparotomy which was effected after the abdominal surgery, demonstrated that the spleen had been lacerated, evidence of a traumatic exploration or one carried out without due care.

(e) No objective diagnostic tests such as a sonogram and/or CAT scan were carried out, which would have demonstrated anemia and the abdominal bleeding which she was suffering.

f) ABH ersonnel did at no time order that blood be obtained for said patient on day of September 25th of 1988, and it was not until 7:00 p.m. in the evening of that day that 500 cc of blood were administered to her.

g) Once the emergency surgery realized on midnight of September 25th of 1988 was concluded, there was no blood left at A.B.H.; consequently, Mrs. Julia went into hypovolemic shock. Only upon request of the surgeon and family members was that in a tardy manner, were telephone contacts made to obtain blood, this during the early morning hours of September 26th of 1988. According to Dr. Vincent Master Wade, said circumstance resulting in lack of blood at A.B.H. precipitated Mrs. Julia's death.

(18) Eight (8) months after Mrs. Julia's death, her husband Mr. Cecilio Huertas Barbosa, died.

(19) Due to their mother's death, plaintiffs haave suffered circumstances highlighted by

depression, pain, suffering and anguish which continues to this day, as this Court was able to observe, when each one of them testified. Each one of the co-plaintiffs, excepting Mateo Huertas Laboy who is disabled, stated in an evidently sad and painful manner, about the suffering and anguish which they have gone through, due to their mother's premature death. Their statements were genuine and real; grave and unforgetable. Co-plaintiffs Carmen, Mateo and Luz M. were minors, at the time of their mother's death. Santos Huertas could not contain the tears during the whole time in which he deposed. He had to take charge of his sibblings, both morally and financially.

CONCLUSIONS IN LAW

The instant complaint is grounded upon Article 1802 of the Civil Code for Puerto Rico (31 LPRA, sec. 5141) which within pertinent section establishes that..." he who either through action or omission causes a damage to another, through intervening guilt or negligence, becomes obligated to redress the damage caused therein."

Whenever interpreting said article, the Supreme Court has ruled in the sense that liability resulting from same gives rise to recovery, if three elements or requirements are met:

1. That a damage has been caused.
2. That there exists culpability or negligence.
3. That there exists a causal relationship between the damage caused, and intervening guilt or negligence. See ***Pérez Escobar vs. Collado***, *90 DPR 806 (1964)*; ***Hernandez vs. Fournier***, *80 DPR 93 (1957)*.

In cases in which malpractice or medical negligence is alleged, it corresponds to the plaintiff to prove, through a preponderance of the evidence, that

treatment rendered by the physician was the factor that with greatest probability, contributed to any damages to the patient, as well as establishing the causal link required under Article 1802 of the Civil Code. ***Rodriguez Crespo v. Hernandez***, *121 DPR 639, 650 (1988);* ***Cruz v. Centro Medico de Puerto Rico***, *113 DPR 719 (1983);* ***Zambrana v. Hospital Santo Asilo de Damas***, *109 DRP 517 (1980).*

Whenever the performance of a physician is evaluated, we must never forget that there exists a presumption that he has exercised a reasonable level of care, and that the medical treatment offered was adequate. See, among others, ***Ramos Robles v. Garcia Vicario,*** *93 JTS 167.*

As to rebut that jurisprudential presumption which covers defendant physicians, plaintiff has to prove that defendant physician and/or physicians did not provide that medical attention which, in view of current means of communication and teaching, and in accordance with current state of scientific and practical knowledge within medicine, do comply with accepted general requirements. See ***Rodríguez Crespo v. Hernández***, above.

Plaintiff can not rely upon the mere possibility that said damage was due to non-compliance by such physician, of his or her professional obligations. That the patient may have suffered a damage or that the treatment has not been successful, does not raise a presumption of negligence by said physician. See ***Rodriguez Crespo v. Hernandez,*** among others.

It is required that causal relationship not merely be established on the basis of mere speculation or conjecture. ***Rodriguez Crespo v. Hernandez,*** above; ***Rios Ruiz v. Mark,*** *119 DPR 816;* ***Ramos Orengo v. La Capital,*** *88 DPR 315 (1963);* ***Sáez v. Municipio de Ponce,*** *84 DPR 535 (1962);* ***Rivera v. Dunscombe,*** *73 DPR 819 (1952).*

In terms of causal relationship we are governed by the theory of adequate causality. ***Jimenez v. Pelegrina Espinel,*** *112 DPR 700 (1982);* ***Soc. de Gananciales v. Jerónimo Corp.,*** *103 DPR 127 (1974).* According to said theory: any condition under which no results take place, is not a cause, but rather the one which ordinarily produces it, in accordance with general experience.

Under same, the question boils down to determining if occurence of a damage was to be expected within the normal course of events or, if on the contrary, it remains unrelated to said possible estimation. J. Santos Briz, *Comentarios al Código Civil y Compilaciones Forales,* Madrid, Ed. Rev. Der. Privado 1984, Vol. XXIV, page 287. Pursuing this theory, in cases in which causes concur, we have ruled that the matter to be elucidated is which of these grounds was the efficent. That is, that we must asses that the decisive one is whichever one precipitates the damage, because of its circumstances. ***Valle v. Amer. Inter. Ins. Co.,*** *108 DPR 6692, 6697 (1979);* ***Toro Lugo v. Ortíz Martínez,*** *113 DPR 56 (1982).* ***Cárdenas Maxán v. Rodriguez,*** *125 DPR 702 (1980).*

If from the evidence rendered, several probable sources of damage arise, no liability shall be imposed upon the physician, unless that upon examining the totality of circumstances it arises that his negligent behavior was what, in greater probability, must have prompted said harm. See ***Vda. de López v. E.L.A.,*** *104 DPR 178, 183 (1975);* ***Ramos Orengo v. La Capital,*** *88 DPR 315 (1963);* ***Sáez v. Municipio de Ponce, supra; Zambrana v. Hospital Santo Asilo de Damas,*** *supra;* ***Cruz v. Centro Médico de Puerto Rico,*** *supra.*

Our juridical rulings obligate the physician to answer for torts and damages caused exclusively because of his negligent actions, due to lack of care

or lack of professional skill, as required by circumstances. Brau del Toro, Herminio, ***Los Daños y Perjuicios Extracontractuales en Puerto Rico,*** *supra.*

In Puerto Rico, minimal rules of care, knowledge and skill required from physicians in cases of alleged professional malpractice are that they offer their patients that (level of) attention that in view of current modern means of communication and teaching and in accordance with scientific knowledge and prevailing practice of medicine, satisfy those professional demands generally accepted within the medical profession. ***Oliveros v. Abreu,*** *101 DPR 209, 226 (1973);* ***Ríos Ruíz v. Mark,*** *supra;* ***López v. Hospital Presbiteriano, Inc.*** *, 107 DPR 197 (1978);* ***Morales v. Hospital Matilde Brenes,*** *102 DPR 188 (1974);* ***Negron v. Municipio de San Juan,*** *107 DPR 375 (1978);* ***Cruz v. Centro Médico de P. R.,*** *113 DPR 719 (1983);* ***Pérez Torres v. Bladuell Ramos,*** *120 DPR 295 (1988);* ***Rodríguez Crespo v. Hernández,*** *supra;* ***Brau del Toro, Herminio, Los Daños y Perjuicios Extracontractuales, JTS Publishers,*** *Vol. I, San Juan, 1986, page 248.*

For a plaintiff to establish prima facie in a tort case due to alleged medical malpractice, the plaintiff has to:

1) establish proof as to minimum standards of medical knowledge and care applicable to generalists and specialists; **2)** demonstrate that the defendant did not comply with said standards, during treatment of the patient, and **3)** that this was the *proximal* cause of the injury (damages) suffered by the patient. See ***Medina Santiago v. Vélez,*** *120 DPR 380 (1988);* ***Rodríguez Crespo v. Hernández,*** supra; ***Rodríguez Retomar v. Maldonado,*** *100 DPR 662 (1972);* ***Oliveras v. Abreu,*** *101 DPR 209 (1973).* Therefore, it is incumbent upon the plaintiff to prove

by a preponderance of evidence that the medical treatment and/or medical non-treatment provided by the defendant was sufficient and proximal cause which with greater probability prompted said damage, and which forms the causal element required under our Article 1802 of the Puerto Rico Civil Code, above. See ***Cruz v.Centro Médico de Puerto Rico,*** *113 DPR 719 (1983).* Said proof must also demonstrate what are the demands for the profession as a whole, in view of current sicentific knowledge, by means of communication and continued education programs. ***Medina Santiago v. Vélez,*** supra. ***Rodríguez Crespo v. Hernández,*** *supra.* It has repeatedly been pointed out that medical'hospital negligence has to be established as a general rule by means of competent expert proof: ***Quiñones v. Duarte Mendoza,*** *112 DPR 223)1982;* ***Oliveros v. Abreu,*** *supra;* ***Rodriguez Crespo v. Hernandez,*** *supra.*

On the other hand we must point out that the physician enjoys ample professional discretion in the treatment of a patient and does not incur into liability if the treatment which he provides to his patient, even when mistaken, is encompassed within certain reasonable limits and accepted within broad sectors within the medical profession. See ***Pérez Torres v. Balduell Ramos,*** *supra;* ***Lozada v. E.L.A.,*** *116 DPR 202, 217 (11985);* ***Pérez Cruz v. Hosp. La Concepción,*** *115 DPR 721(1984);* ***Fernandez v. Hosp. Gen. San Carlos, Inc.*** *113 DPR 761 (1983);* ***López v. Hospital Prebiteriano,*** *supra*

That is how liability has been rejected whenever the physician has used proper professional judgment and when same is in tune with what is accepted within ample sector of the medical profession.

Therefore the existence of diversity of criteria amongst medical authorities as to whether certain treatment or procedure was or was not valid under the circumstyances of such case, is a valid defense for a defendant physician.

An honest and reasonable error in judgment as to the procedure used by the physician may not be a sufficient basis for imposing of liability upon him, above all whenever the pattern of conduct which he displayed is a practice accepted by modern medical profession in said type of situations, and whenever medical authorities do not agree as to the treatment rendered. See ***Cruz v. Centro Médico,*** *supra*; ***Fernándfez v. Hosp. Gen. San Carlos, Inc.,*** *supra*; ***Rodríguez Crespo v. Herández,*** *supra, to page 649.*

Once applicable law is viewed, we then apply same to the particular facts of the instant case.

Based upon the proof presented by the plaintiff, the court concludes that we are in presence of a clear-cut case of gross medical negligence, determined through mismanagement to which the deceased patient, Mrs. Julia, was subjected to, to wit:

(1) her spleen was lacerated when Dr. Rodríguez González performed a surgery which was not indicated for her condition; (2) when post surgical diagnostic tests were not performed to determine the location and degree of internal bleeding which she had been suffering; (3) by not immediately consulting with a senior surgeon upon knowing that she had been bleeding (at 10:00 A.M. on September 25th of 1988) and by waiting almost a whole day and part of that night, when Dr. Roque Nido Laracuente was called in and who, in effect, performed such surgical procedure (4); by not having any blood available nor making same available in time to avoid that the deceased party

die from hypovolemic shock.

It is sad to think that a lady who gave birth to fourteen (14) children, who was in excellent health upon admission to A.B.H. and all her vital organs were intact, could die due to lack of care and prudence by the defendant and their employees, officers, directors and/or agents.

The children of Mrs. Julia Laboy Rosa gave their version of the anguish and suffering suffered by every one of them.

All the plaintiffs were very depressed and wept in court.

The plaintiffs expressions of pain were evident and genuine, in spite of the facts having occured more than eleven (11) years ago. The mental and moral injuries suffered by each one of the plaintiffs are serious and profound, particularly as to co-plaintiffs Carmen Huertas Laboy, Mateo Huertas Laboy, Luz M. Huertas Laboy, and Santos Huertas Laboy. The first three were minors at the time of their parents death, and became orphaned at a young age. Santos Huertas Laboy was the eldest of the sibblings; he never stopped weeping during his testimony, given the very painful and sad memories that he suffered when, in less than six months, he had to bury both parents, and take charge of maintaining not only the financial, but also the moral and mental support of his sibblings, to help them cope with their lives.

We must compensate the anguish and suffering of the plaintiffs for there to exist rightious justice.

Said intention inspires us to carry out a detailed analysis of the doctrine of soverign inmunity and of Law No. 104 of 1955, 32 L.P.R.A. sections 3077-3084.

The Law of Litigations against the State under its Article 2(a), 32 L.P.R.A., section 3077, authorizes suits against the Commonwealth of Puerto Rico in torts actions resultant from negligent actions or omissions by its employees, whenever acting within an official capacity, and within the framework of their functions. By approving said law, the state broadly waived protection of soverign inmunity, and for the first time a cap was imposed as to the limit of claimable amounts.

Subsequently a determination ensueded in the case of ***Galarza Soto v. E.L.A.,*** *109 DPR 179 (1979).* Judge Rigau in his opinion, partially concurring and partially dissenting, sustained that the soverign state doctrine is unconstitutional since it "...violates the right of equal protection under the law by establishing that recovery can be effected for damages caused by private parties, but not forthose caused by the State, since such a classification lacks a rational basis... and because... it constitutes an inequity which violates one of the general principles of law: equity..." Id., pages 201-202.

On the other hand, in his particular opinion, Judge Irrizarry Yunqué gathered that Law 104, violates due process of law by hindering or attempting to limit access to the courts by those persons to whom the State has inflicted a damage.

He further interpreted that said law was contrary to equal protection under law. Finally, he stressed the fact that soveringty of the State Doctrine was decadence.

In 1981 the case of Torres v. Castillo Alicea 111 DPR 782 (1981) was decided, which held that Article 2(a) of Law No. 104, above, was unconstitutional. The Financial limits were declared to be unconstitutional since this prompted those aggrieved to resort to the Legislative Assembly in

search of exemptions, thus violating the principle of separation of powers and equality under the law.

Things being as they were, the Legislative Assembly amended Law No. 104, above, through Law No. 30 of September 25th of 1983, increasing compensatable limits to $75,000.00 for one cause of action, and to $150,000.00 in cases of a claimant with several causes (of action) or several claimants.

In view of the said developments, our highest forum resolves ***Defendini Collazo v. Estado Libre Asociado.*** *93 JTS 119,* to in fact determine whether compensatable limits are unconstitutional.

Under analysis of the clause of equal protection under the laws, it was established that a rational link existed between the interest of protecting the treasury, and limits for compensatable amounts. Under the spectrum of the principles of due process under the law it was acknowledged that the State's interest in protecting the treasury is legitimate and reasonably related with the economic limitations imposed therein. It was further stated that imposed limits are under rational grounds, and were not patently arbitrary, due to the economic impact that claims against the Commonwealth of Puerto Rico have upon the treasury.

With the next century now approaching, this court is today confronted with said precendents. With the intent of rendering justice, we must moderate and visualize them in tune with those needs and realities which pervade our times.

The doctrine of immunity of the soverign is in decline. The tendency both in the United States and in Puerto Rico has been to limit same, (the immunity). Moreover, several american state jurisdictions have abolished ***Aleman Martínez v. Commonwealth.*** *98 JTS 52;* ***Personal Opinion by Associate Judge Irrizarry Yunqué in Galarza Soto v. E.L.A.*** *supra;* ***Comments about the***

Doctrine of State Immunity: Piñeiro v. E.L.A., *45 Rev. Jur. U.P.R. 79,* ***Mario J. Pabón Cátala,*** *(1976).* it. See Personal Dissenting Vote Issued by Associate Judge Naveira de Rondón in

Numerous reasons have contributed towards said tendency. Let us then see which ones these are. The current differentiations in our juridical structure between the State and its citizens, in terms of extra-contractual liability, is totally unreasonable. The State must answer under equal terms and sufficient extension, in torts actions, identical to that of their citizens. The State renders certain services to the populace; as part of said service, it must answer for those torts that they produce during their rendering thereof. Said logic would result in extensive benefits for the citiznery as a whole, since it would entail that governmental officials would carry out their duties with due care and excellence. To said ends see ***Is the Doctrine of State Immunity in Puerto Rico Unconstitutional?*** *43 Rev. Col. Ab. 6651 (1982), R. Eifren Bernier.* On the other hand, in the majority of occasions a lack of proportion between the amounts granted to persons affected by negligent actions by governmental employees, and the reality of the damages by them suffered, becomes evident. Said circumstance makes the established economic limits arbitrary, and furthermore places said citizens at a disadvantage whenever said tort is caused by the State, vis a vis when prompted by a private citizen, under presumption that the remedy granted is proportionate to whatever damage is inflicted.

Finally, this court does not find any reason whatsoever to ground upon the argument that interest in protecting the treasury sustains the constitutionality of the existing economic ceilings. In fact, sentences rendered against the State are the the reason for the government's financial problems.

Los límites económicos en las demandas contra el Estado. Furthermore, alternative means such as purchasing insurance, have been explored, to face any impact that the elimination of the financial caps within the government's financial capability, might have. See: ***Is the Doctrine of State Inmunity in Puerto Rico Unconstitutional?***, supra.

This court deems that current financial ceilings established under the Law of Litigation against the State are totally unrealistic and unreasonable. Suffice with a mere examination of statistics gathered by the Department of Labor and Human Resources, about Consumer Price (index), Percentual in Changes of the General Consumer Price Index and Purchassing Power of Consumer Dollars for all the families within Puerto Rico, which covers from 1984, and we then see an ample economic development, and the resulting devaluation of the dollar. An obvious fact is that the financial caps thereby imposed are unchanging, lacking any procedure for a continual indexing. Consequently, limits which have been fixed neither adjust to, nor are proportional to any changes within the economy.

Current financial caps were established in 1984. Since then many years have gone by, and all circumstances that have been examined undoubtedly point towards the conclusion that the above stated section 3077 is unconstitutional; we specifically dictaminate this, since it violates the fundamental principles of due process of law and of equal protection uncer the law. Being therefore unconstitutional, it has no place whatsoever within our judicial system.

Through said decree, a priviledged manner of litigating thus disappears from the juridical stage, one that promotes injustice, since it induces a lax attitude whenever litigating cases, to a point such

that in this particular one, the State allowed it to be extended during ten (10) years, and in the end, did not even provide proof of any kind, nor any prior reasonable offer either. Actually, what the State did was, in an abusive manner, force the plaintiffs to litigate a clear-cut case of malpractice, which required that they invest a substantial degree of time and money, by having to contract medical experts to prove their case.

Upon fulfilling our duty to dispense justice, we should execute and have an obligation to open the gates to allow the flow of ideas and doctrines which respond and adapt to the reality of modern times, and even to dislodge them, whenever the substative legal framework integrate a monolithical wall which hinders soverign expression of justice which demands and claims a breach so it may flow through; in this case, a remedy which would adequately compensate the breadth of the plaintiffs anguish and suffering, and which would hinder the commission of an injustice.

Having stated the above, we must evaluate the damages.

"Damage is any moral or material loss which a person may suffer, either to his/her basic material assets, to his property or patrimony, prompted in violation of a juridical rule, and for which he has to answer to another...:

Monetary indemnity or compensation consists in providing an adequate sum of monies to the aggrieved party, to compensate their damaged interests. It is like an actual substitution in which money replaces tortfeasible damages suffered therein". ***García Pagán v. Shiley Caribbean,*** *122 DPR 193 (1988).*

The suffering felt by a son/daughter due to the loss of his mother is an unavoidable psychic process for all normal human beings; it is an

ordinary customary fact of life, of general and common knowledge, notorious and indisputable which is or must be judicially acknowledged. Even so, it must be proven that the claimant's health, wellbeing or happiness was affected in a measureable extent. See ***Moa v. E.L.A.,*** *100 DPR 573 (1972).*

Here we encounter a family group with extremely solid family ties, a family group with an extraordinary level of stability, to a point such that Mrs. Julia's absence undoubtedly precipitated the premature demise of her husband Mr. Cecilio Huertas. All fourteen (14) children were left orphaned from father and mother barely within eight (8) months after Mrs. Julia's departure. The faces and demeanor in court of all their children would have to be observed, more than ten (10) years after these events, to be able to perceive how difficult and permanent this blow that life has struck them was and is, for these human beings. This is definitely not a passing pain or a fragile ordeal; this is an inmense, real and unforgettable damage.

The task of estimating damages is anguishing and difficult. Nevertheless, that direct contact which we have had with the proof places us within a privileged position as to determine the true and actual cost of the damages in this case. See ***Rojas v. Maldonado,*** *68 DPR 818 (1948);* ***Rodríguez Cancel v. A.E.E.,*** *116 DPR 443, 451 (1985).*

A compensation so conceived, endorsed and evaluated in response to said standards, placed upon the exercise of judicial discretion, such as in similar cases, conveys the deepest feelings for our souls from the gratification resultant from the moral conviction of justice well dispensed.

In consideration of the above stated determinations of fact and conclusions of law, the Court renders the following Sentence:

a) Compensates torts and damges for the suffering and mental anguish of each and every one of the fourteen (14) children of the deceased, Mrs. Julia Laboy Rosa at a basic amount of $100,000.00 each, that is, a sum total of $1,400.000.00.

b) Establishes an amount of $280,000.00 for tortfeasible damages suffered through a horrendous death inflicted upon Mrs. Julia by forced to be bloodless for a full day, to be distributed in equal parts amongst all her children.

This Court orders payment of costs and fees for the plaintiff, plus all legal interests accumulated from the sentence, beginning from time of notice therein.

BE IT REGISTERED & NOTIFIED.

In Guayama, Puerto Rico this 20th day of october of 1998.

[sgd.]

DANTE AMADIS RODRIGUEZ SOSA
Superior Court Judge

Certified:
Edna Ramos
Secretary

GLORIA MA. GUZMAN BERMUDEZ
Court Secretary I

IN THE UNITED STATES OF AMERICA
FOR PUERTO RICO DISTRICT

SUNC. CECILIO HUERTAS BARBOSA Y LA SOCIEDAD DE BIENES GANANCIALES COMPUESTA POR CON JULIA LABOY ROSA; CECILIO DANIEL, SALVADOR SANTOS, HERMINIA ELMIS, MANUEL MINERVA, JOSEFINA, CARMEN IRIS, LUZ, MATEO Y FRANCISCO, TODOS DE APELLIDO HUERTAS LABOY; SANTOS LABOY Y CASIMIRA MARTINEZ Y LA SOCIEDAD LEGAL DE BIENES GANANCIALES COMPUESTA POR SANTOS LABOY Y CASIMIRA MARTINEZ. **Plaintiffs** Vs. COMMONWEALTH OF PUERTO RICO. **Defendant**	**Civil No.** _____ **Declaratory Judgment**

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW Plaintiffs thru the undersigned attorney and respectfully alleges and prays:

1. Plaintiffs are resident of both the Commonwealth of Puerto Rico and the Commonwealth of Massachusets.

2. The Commonwealth of Puerto Rico operated on or around 1988 a medical hospital facility known as Alejandro Buitrago´s Hospital.

3. That Plaintiffs and the Defendant have litigated in the local court a civil action for damages in a malpractice case before Court of First Instance, Superior Court Guayama, under civil number GDP88-2291. A judgement was entered in favor of Plaintiffs in the amount of $1,640,000.00. Said award was granted due to the death by gross negligence of Plaintiff's mother, Julia Laboy Rosa. (See exhibit A)

JURISDICTION

4. Plaintiff respectfully invokes the jurisdiction of this Honorable Court under Section 1331 and 2201 Title 28, United State Code Annotated and the Constitution of the United States, V, XIV, IV and VI Amendments whereby plaintiff seeks the annullment of Section 3077 (A) of Title 32 of Laws of Puerto Rico Anotated for the same is unconstitutional.

5. Plaintiffs respectfully challenge said law of the Commonwealth of Puerto Rico for the same unconstitutional, and in grave violation of the Fifth and Fourtheen Admendments of the United States Constitution. Moreover, it violates the concept of human dignity typified both in the U.S. Constitution and the Constitution of the Commonwealth of Puerto Rico. Plaintiffs respectfully understand that the Eleventh Admendment does not apply in this case for the jurisdiction sought is under the Fifth and Fourtheen Admendments of U.S: Constitution. ***Stanley Díaz Gandía vs. Dapena Thompson***, (Civil no. 95-2005, July 25, 1996 , US Court of Appeals)

GENERAL ALLEGATIONS

6. In the Judgment issued in the cited civil case the Superior Court declared that Section 3077 of Title 32 of LPRA violates the Equal Protection Clause and the Due Process Clause under both the United States Constitution and the Commonwealth of Puerto Rico Constitution. (See exhibit A)

7. Moreover, it stated that the maximum amount to be awarded not to exceed the amount of $150,000.00 per occurrence by declaring unconstitutional Section 3077 (B). The court awarded each Plaintiff in said case $100,000.00 for the death of their mother and an additional amount of $240,000.00 for the pain and suffering of the deceased Julia Laboy who lasted more than one day in grave pain before her death.. She died due to a hyporvolumic shock (loss of blood) while she was hospitalized, treated and operated at the Alejandro Buitrago Hospital. (See Exhibit A).

8. In declaring Section (3077 (A)) unconstitutional, the Court expressed in its finding of law the that said statute violates Due Process and Equal Protection Clause. (See Exhibit A)

9. The Commonwealth of Puerto Rico appealed said judgment to the Circuit Court of Appeals of Puerto Rico stating that the Judgment entered by the Superior Court violates the doctrine established in the cases of ***Defendini Collazo v. E.L.A.***, 93 JTS 119. (See exhibit B)

10. The Circuit Court of Appeals of Puerto Rico substantially reduced, the Judgment of the Superior Court; It took away more than 92% the amount of compensation granted to Plaintiffs. The judgment was reduced from $1,640,000.00 to $150,000.00 notwithstanding the fact that the Circuuit Court never modified the finding relating to

damages. It just apply the maximum coverage payable by the Commonwealth of Puerto Rico. (Exhibit B)

11. A reconsideration was filed before the Circuit Court, stating in essence that the action entered in appeal violates the Due Process Clause and the Equal Protection Clause under both the U.S. Constitution and Commonwealth of Puerto Rico Constitution. Moreover, said judgment violates the human dignity expressed in the U.S. and Puerto Rico Constitutions. In addition, the judgment in appeals is confiscatory and in essence preempts the concept of property over the non-economic damages suffered by the Plaintiffs and their deceased mother. (See exhibit E).

REMEDY SOUGHT

12. Plaintiffs respectfully request that Section 3077-A be declared unconstitutional by this Honorable Court for it violates the Due Process and the Equal Protection Rights of Plaintiffs as expressed in the Fifth and Fourtheen Admendment of the Unites States Constitution. Moreover, plaintiffs understand that Section 3077(A) is confiscatory and does not grant damages in conformity to the loss and suffering that Plaintiffs have experienced in the local action, which were recognized by the Superior Court.

13. Plaintiffs respectfully understand that Section 3077(A) violates Due Process Clause of the U.S. Constitution on the following grounds:

a) It prolongs in an excessive and abusive manner the litigation of a case (in the instant case more than 10 years) by granting special privileges to the Commonwealth of Puerto Rico, specifically by not granting interest and attorney fee. The constitutional provision of a speedy, fair and just trial cannot be met as established in the Fifth and Fourtheen Admendment of the U.S. Constitution.

b) The maximun amount payable by the state violates the due process clause for it does not grant adequate and just compensation for individuals and/or persons who are the victims of the Commonwealth of Puerto Rico´s negligence. This situation occurrs in Puerto Rico in a daily basis.

c) The judgment entered by the Circuit Court of Appeals is confiscatory for it implies a taking without due process and compensation. The damages entered per se were never challenged.

14. Moreover, plaintiff respectfully solicit from this Honorable Court that Section 3077(A) be declared inconstitutional for it violates the Equal Protection Clause of U.S. Constitution on the following grounds:

a) Section 3077 (A) violates the Equal Protection Clause for it establishes the fact that a Plaintiff can recover damages from a particular person but not the same damages from the Commonwealth of Puerto Rico, ***Galarza Soto v. ELA***, *109 DPR 179.*

b) It creates a special situation for different individuals who seek damages from the Commonwealth of Puerto Rico. Certain individuals are deprived of compensation in regular normal cases like the present one; while others in civil right cases, before the U.S. District Court and againts Public Officials of Commonwealth of Puerto Rico, said Plaintiffs, can recover damages in excess of the $150,000.00 limits stated in section 3077 (A)

c) Also Section 3077 (A) violates the Federal Equal Protection Clause for it violates the human dignity of a person by not granting adequate and fair compensation to persons who have been the victims of a negligent act committed by the Commonwealth of Puerto Rico. By lowering in an inordinate manner the compensation for damages, the Commonwealth of Puerto Rico is constructively

promoting slavery in Puerto Rico, whereby its citizens are not even adequatly compensated in their damage. Human values and respect are grossly cheapen and greatly andangered, for the state can promote a policy of inefficiancy in the public sector.

15. Moreover, Section 3077(A) as well as the judgment in appeal entered by the Circuit Court, is extremily confiscatory for it denies fair compensation for non economic damages suffered by plaintiffs.

PRAYER

Therefore, in light of the above facts, the constitutional violations as well as the requested remedies, it is respectfully requested from this Honorable Court that a judgment be entered whereby this Honorable Court declares unconstitutional Section 3077 (A) of Title 32 of the Laws of Puerto Rico for it violates the Due Process Clause and Equal Protection Clause, under the Fifth and Fourtheen Admendments of the U.S. Constitution.

In San Juan, Puerto Rico at this date 3 of June, 1999.

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